

Honeywell, Inc. and De Sicora and Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO,¹ Party in Interest

Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO and De Sicora. Cases 18-CA-11465, 18-CA-11608, 18-CB-3020, and 18-CB-3038

February 23, 1993

ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 27, 1992, the National Labor Relations Board issued a Decision and Order in this proceeding, adopting the judge's decision which found that Honeywell violated Section 8(a)(1) and (2) of the Act and that the Union violated Section 8(b)(1)(A) and (2) of the Act by agreeing to accrete nonunion salaried technicians into the production and maintenance bargaining unit and by attempting to implement an arbitration award which found the technicians to be included in the unit.² Thereafter, on June 15, 1992, the General Counsel filed a motion for reconsideration. On June 23, 1992, the Respondent Union filed a motion for reconsideration and a memorandum in response to the General Counsel's motion for reconsideration. The Respondent Honeywell filed a memorandum in response to the two motions for reconsideration, and the International Brotherhood of Teamsters, AFL-CIO filed a position statement as an amicus curiae in support of the Respondent Union's motion for reconsideration.

In its motion, the Union requests that the Board reconsider its Order and enter a decision consistent with the arbitrator's determination that the 13 technician positions involved are production positions covered by the collective-bargaining agreement. The Union argues, as it did in its exceptions, that the primary issue is not accretion but work assignment and that the arbitrator found that it was a violation of the collective-bargaining agreement between Honeywell and the Union to assign production work to nonbargaining unit employees without first posting those jobs as required by the contract. Accordingly, the Union argues that the award does not require the accretion of salaried technicians into the bargaining unit and that the Board should defer to the award. Further, the Union argues that the record clearly indicates, contrary to the findings of both the Board and the judge, that the positions involved are production positions and not research and development positions and that production work, based on a long line of arbitration awards between the par-

ties, is bargaining unit work. In its memorandum, Honeywell also argues that the arbitrator found that the work in question was production work covered by the collective-bargaining agreement between the parties and that the issue in this case involves work assignment and not accretion.

In his motion, the General Counsel requests that the Board reconsider its remedial order so as to extend the remedy to any technicians who were laid off as a result of the unlawful accretion. Because of the unlawful accretion, Respondents took the position that the salaried technicians would be eligible to perform the work only if they agreed to be in the unit and to be covered by the contract's union-security clause. They declined, the work was given to unit employees, and the technicians were laid off. Accordingly, the General Counsel argues, they should be reinstated and made whole. The General Counsel acknowledges that, at the time of the hearing, such layoffs had not yet occurred but argues that, since the hearing, several technicians have been laid off as a result of the accretion. The General Counsel notes that complaints have been issued with respect to two such employees, and that further unfair labor practice charges alleging more layoffs were filed on May 22, 1992. The General Counsel contends that determining the identity of these employees and their backpay entitlement in this case (i.e., in the compliance stage) would eliminate the time and expense of litigating the outstanding complaints.

The General Counsel further asserts that employment agency employees were subjected to similar treatment. Thus, the General Counsel requests that the Union be required to make whole, jointly and severally with Honeywell, the employment agency employees, who were denied permanent employment as a result of the unlawful accretion.

Both Honeywell and the Union oppose the General Counsel's motion, arguing that the judge's remedy should be reversed, not expanded.

We find no merit in the Union's motion, which reiterates the arguments made in its exceptions and considered and rejected by the Board. We find merit, however, in the General Counsel's argument that any technicians who may have been denied transfers and laid off as a result of the unlawful agreement between Honeywell and the Union to accrete salaried technicians are entitled to reinstatement and a make-whole remedy. As the General Counsel notes, extending the remedy in the instant case to those employees injured as a direct result of the unlawful accretion would eliminate the additional litigation of outstanding complaints alleging such layoffs. Further, the parties may introduce at the compliance stage evidence that may be relevant to the

¹ The name of the Respondent Union has been changed to reflect the new official name of the International Union.

² 307 NLRB 278.

appropriateness of the reinstatement and backpay portions of the remedy.³

Accordingly, we order that the Union's motion for reconsideration is denied as lacking in merit and containing nothing not previously considered. We further order that the General Counsel's motion for reconsideration is granted, and that Honeywell is required to reinstate, and, jointly and severally with the Union, is required to make whole those technicians, if any, who were denied transfers and laid off as a result of the unlawful accretion as well as those employment agency employees who were denied permanent employment as a result of the unlawful accretion.⁴ Backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest to be computed in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that

A. Respondent Honeywell, Inc., Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Entering into any agreement with Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO regarding the accretion of Solid State Electronics Center (SSEC) employees into the Teamsters bargaining unit unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected the Union as their collective-bargaining representative.

(b) Implementing any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

(c) Threatening SSEC employees with discharge in the event they refuse to become members of the Teamsters collective-bargaining unit.

(d) Failing and refusing to hire certain employment agency employees as permanent Honeywell employees.

(e) Denying transfers to and laying off SSEC employees as a result of any agreement with Teamsters Local No. 1145 accreting SSEC employees into the Teamsters bargaining unit.

³To the extent that employment agency employees suffered an employment loss because of the unlawful accretion, a make-whole order for them is also appropriate.

⁴The Board with judicial approval has imposed joint and several liability where both the employer and the union contributed to the discrimination. *Pacific Coast Utilities Services*, 238 NLRB 599 (1978), enf'd. 638 F.2d 73 (9th Cir. 1980); *Sargent Electric*, 209 NLRB 630 (1974). In the instant case, both the loss of permanent positions by employment agency employees and any denial of transfers and layoffs of technicians are the direct result of the unlawful conduct of Honeywell and the Union.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful agreement with the Union regarding the accretion of SSEC employees into the bargaining unit and the implementation of the arbitrator's award requiring such accretion.

(b) Hire as permanent Honeywell employees the various employment agency employees who would have been hired as permanent Honeywell employees, and make them whole, jointly and severally with the Teamsters, for any loss of pay or other benefits.

(c) Offer to any SSEC employees denied a transfer and laid off as a result of the unlawful agreement with the Teamsters immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, jointly and severally with the Teamsters, for any loss of pay or other benefits.

(d) Post at each of its facilities in the Minneapolis area where notices to employees are customarily posted copies of the attached notice marked "Appendix A."⁵ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by Honeywell's representative, shall be posted by it immediately upon receipt and maintained by Honeywell for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Honeywell to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Honeywell has taken to comply.

B. Respondent Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into any agreement with Honeywell, Inc. regarding the accretion of SSEC employees into the Teamsters bargaining unit unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected the Union as their collective-bargaining representative.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Implementing any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful agreement with Honeywell regarding the accretion of SSEC employees into the bargaining unit and the implementation of the arbitrator's award requiring such accretion.

(b) Make whole, jointly and severally with Honeywell, the various employment agency employees who would have been hired as permanent Honeywell employees for any loss of pay or other benefits, with interest.

(c) Make whole, jointly and severally with Honeywell, any SSEC employees denied transfers and laid off as a result of the unlawful agreement with Honeywell for any loss of pay or other benefits, with interest.

(d) Post at its union offices and on each of its in-plant bulletin boards at Honeywell facilities in the Minneapolis area where notices to members are customarily posted copies of the attached notice marked "Appendix B."⁶ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Teamsters' representative, shall be posted by it immediately upon receipt and maintained by the Union for 60 consecutive days thereafter. Reasonable steps shall be taken by Honeywell and the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT enter into any agreement with Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO whereby it is agreed that Solid State Electronics Center employees will be accreted into the existing Teamsters bargaining unit, unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected Teamsters Local No. 1145 as their collective-bargaining representative.

WE WILL NOT implement or enter into any agreement with Teamsters Local No. 1145 to implement any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

WE WILL NOT threaten employees with discharge if they refuse to agree to be included within the Teamsters bargaining unit.

WE WILL NOT delay the permanent hiring of any employment agency employees.

WE WILL NOT deny transfers to or lay off any SSEC employees as a result of any agreement with Teamsters Local No. 1145 accreting SSEC employees into the Teamsters bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind any agreements we have entered into with Teamsters Local No. 1145 regarding the accreting of SSEC employees into the Teamsters bargaining unit.

WE WILL permanently hire any employment agency employees who would otherwise have been hired as Honeywell employees, and make them whole, jointly and severally with the Teamsters, with interest, for any loss of pay or benefits.

WE WILL offer any SSEC employees who may have been denied a transfer and laid off as a result of any agreement with Teamsters Local No. 1145 accreting of SSEC employees into the Teamsters bargaining unit immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole, jointly and severally with Teamsters Local No. 1145, for any loss of pay or benefits, less any net interim earnings, plus interest.

HONEYWELL, INC.

⁶See fn. 5.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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WE WILL NOT enter into any agreement with Honeywell, Inc. whereby it is agreed that Solid State Electronics Center employees will be accreted into the existing Teamsters bargaining unit, unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected Teamsters Local

No. 1145, affiliated with International Brotherhood of Teamsters, AFL-CIO as their collective-bargaining representative.

WE WILL NOT implement or enter into any agreement with Honeywell, Inc. to implement any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

WE WILL NOT in any like or related manner restrain or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind any agreements we have entered into with Honeywell, Inc. regarding the accreting of SSEC employees into the Teamsters bargaining unit.

WE WILL make whole, jointly and severally with Honeywell, Inc., any employment agency employees who would otherwise have been hired as Honeywell employees, for any loss of pay or benefits, with interest.

WE WILL make whole, jointly and severally with Honeywell, Inc., any SSEC employee denied a transfer and laid off as a result of any agreement with Honeywell, Inc. accreting SSEC employees into the Teamsters bargaining unit for any loss of pay or benefits, less any net interim earnings, plus interest.

TEAMSTERS LOCAL NO. 1145